



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,745	01/15/2004	Stefan M.C. Pypc	2676-4555.1US	5708

24247 7590 06/01/2005

TRASK BRITT  
P.O. BOX 2550  
SALT LAKE CITY, UT 84110

EXAMINER
----------

LIU, SAMUEL W

ART UNIT	PAPER NUMBER
----------	--------------

1653

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/757,745

Applicant(s)

PYPE ET AL.

Examiner

Samuel W. Liu

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 8-11 and 22-24 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 8-11 and 22-24 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Status of claims*

Claims 8-11 and 22-24 are pending.

Applicants' preliminary amendment filed 1/15/04, which cancels claims 1-7 and 12-21 has been entered. The following Office action is applied to the pending claims 8-11 and 22-24.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 8-9 and 22-24, drawn to an isolated polynucleotide encoding a protein comprising SEQ ID NO:2 or a fragment of SEQ ID NO:2 (fragment consisting of amino acid residues 54-140 of SEQ ID NO:2 or 54-362 of SEQ ID NO:2 or 54-273 of SEQ ID NO:2), are classified in class 536, subclass 23.1, and class 435, subclasses 69.1 and 320.1.
- II. Claim 10, drawn to drawn to an isolated polynucleotide of SEQ ID NO:3 which encodes a protein of SEQ ID NO:4, are classified in class 536, subclass 23.1, and class 435, subclasses 69.1 and 320.1.
- III. Claim 11, drawn to drawn to an isolated polynucleotide of SEQ ID NO:5 which encodes a protein of SEQ ID NO:6, are classified in class 536, subclass 23.1, and class 435, subclasses 69.1 and 320.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I, II and III are patentably distinct from one another because of the materially different structures of the compounds claimed. The Invention I polynucleotide encoding the SEQ ID NO:2 polypeptide, the Invention II polynucleotide encoding the SEQ ID NO:4 polypeptide

Art Unit: 1653

while the Invention III polynucleotide encoding the SEQ ID NO:6 polypeptide. These polypeptides: SEQ ID NO:2 (362 amino acids), SEQ ID NO:4 (370 amino acids) and SEQ ID NO:6 (442 amino acids) differ from one another in their sequences as well as lengths; and thus, the polynucleotide encoding the polypeptides thereof are distinct/different in nucleotide sequence and length. Hence, each Group is independent invention.

Because these inventions are distinct for the reasons given above and since they have acquired a separate status in the art shown by their divergent subject matter, and/or are separately and independently searched, restriction for examination purposes as indicated is proper.

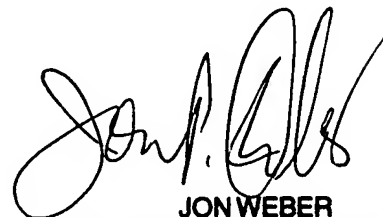
Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel Wei Liu, Ph.D. whose telephone number is (571) 272-0949. The examiner can normally be reached Monday-Friday 9:00 -5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber, can be reached on (571) 272-09525. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communication and (703) 305-3014 for the after final communication.



Samuel W. Liu, Ph.D.

May 25, 2005



JON WEBER  
SUPERVISORY PATENT EXAMINER